

(g) *Definitions.* (1) The terms used in this section shall have the same meaning as set forth in §152.13(b) of this chapter.

(2) *Insured depository institution.* *Insured depository institution* has the same meaning as defined in section 3(c)(2) of the Federal Deposit Insurance Act.

(3) With regard to paragraph (f) of this section, the term *relevant geographic area* is used as a substitute for *relevant geographic market*, which means the area within which the competitive effects of a merger or other combination may be evaluated. The relevant geographic area shall be delineated as a county or similar political subdivision, an area smaller than a county, or an aggregation of counties within which the merging or combining insured depository institutions compete. In addition, the OCC may consider commuting patterns, newspaper and other advertising activities, or other factors as the OCC deems relevant.

(h) *Special requirements and procedures for transactions under paragraphs (b) and (c) of this section—*(1) *Certain transactions with no surviving Federal savings association.* (i) The OCC must be notified of any transaction under paragraph (b)(1) of this section. Such notification must be submitted to the OCC at least 30 days prior to the effective date of the transaction, but not later than the date on which an application relating to the proposed transaction is filed with the primary regulator of the resulting institution; the OCC may, upon request or on its own initiative, shorten the 30-day prior notification requirement. Notifications under this paragraph must demonstrate compliance with applicable stockholder or accountholder approval requirements. Where the Federal savings association submitting the notification maintains a liquidation account established pursuant to part 192 of this chapter, the notification must state that the resulting institution will assume such liquidation account.

(ii) The notification may be in the form of either a letter describing the material features of the transaction or a copy of a filing made with another Federal or state regulatory agency seeking approval from that agency for the transaction under the Bank Merger

Act or other applicable statute. If the action contemplated by the notification is not completed within one year after the OCC's receipt of the notification, a new notification must be submitted to the OCC.

(2) *Other transfer transactions—*(i) *Expedited treatment.* A notice in conformity with §116.25(a) of this chapter may be submitted to the OCC under §116.40 of this chapter for any transaction under paragraph (c) of this section, provided all constituent Federal savings associations meet the conditions for expedited treatment under §116.5 of this chapter. Notices submitted under this paragraph must be deemed approved automatically by the OCC 30 days after receipt, unless the OCC advises the applicant in writing prior to the expiration of such period that the proposed transaction may not be consummated without the OCC's approval of an application under paragraphs (h)(2)(ii) or (h)(2)(iii) of this section.

(ii) *Standard treatment.* An application in conformity with §116.25(b) of this chapter and paragraph (d) of this section must be submitted to the OCC under §116.40 by each Federal savings association participating in a transaction under paragraph (b)(2) or (c) of this section, where any constituent savings association does not meet the conditions for expedited treatment under §116.5 of this chapter. Applications under this paragraph must be processed in accordance with the procedures in part 116, subparts A and E of this chapter.

§ 163.27 Advertising.

No Federal savings association shall use advertising (which includes print or broadcast media, displays or signs, stationery, and all other promotional materials), or make any representation which is inaccurate in any particular or which in any way misrepresents its services, contracts, investments, or financial condition.

§ 163.33 Directors, officers, and employees.

(a) *Directors—*(1) *Requirements.* The composition of the board of directors of a Federal savings association must be

in accordance with the following requirements:

(i) A majority of the directors must not be salaried officers or employees of the savings association or of any subsidiary thereof.

(ii) Not more than two of the directors may be members of the same immediate family.

(iii) Not more than one director may be an attorney with a particular law firm.

(2) *Prospective application.* In the case of an association whose board of directors does not conform with any requirement set forth in paragraph (a)(1) of this section as of October 5, 1983, this paragraph (a) shall not prohibit the uninterrupted service, including re-election and re-appointment, of any person serving on the board of directors at that date.

(b) [Reserved]

§ 163.36 Tying restriction exception.

For applicable rules, see regulations of the Board of Governors of the Federal Reserve System.

§ 163.39 Employment contracts.

(a) *General.* A Federal savings association may enter into an employment contract with its officers and other employees only in accordance with the requirements of this section. All employment contracts shall be in writing and shall be approved specifically by an association's board of directors. An association shall not enter into an employment contract with any of its officers or other employees if such contract would constitute an unsafe or unsound practice. The making of such an employment contract would be an unsafe or unsound practice if such contract could lead to material financial loss or damage to the association or could interfere materially with the exercise by the members of its board of directors of their duty or discretion provided by law, charter, bylaw or regulation as to the employment or termination of employment of an officer or employee of the association. This may occur, depending upon the circumstances of the case, where an employment contract provides for an excessive term.

(b) *Required provisions.* Each employment contract shall provide that:

(1) The Federal savings association's board of directors may terminate the officer or employee's employment at any time, but any termination by the association's board of directors other than termination for cause, shall not prejudice the officer or employee's right to compensation or other benefits under the contract. The officer or employee shall have no right to receive compensation or other benefits for any period after termination for cause. Termination for cause shall include termination because of the officer or employee's personal dishonesty, incompetence, willful misconduct, breach of fiduciary duty involving personal profit, intentional failure to perform stated duties, willful violation of any law, rule, or regulation (other than traffic violations or similar offenses) or final cease-and-desist order, or material breach of any provision of the contract.

(2) If the officer or employee is suspended and/or temporarily prohibited from participating in the conduct of the association's affairs by a notice served under section 8(e)(3) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(3) and (g)(1)), the association's obligations under the contract shall be suspended as of the date of service unless stayed by appropriate proceedings. If the charges in the notice are dismissed, the association may in its discretion (i) pay the officer or employee all or part of the compensation withheld while its contract obligations were suspended, and (ii) reinstate (in whole or in part) any of its obligations which were suspended.

(3) If the officer or employee is removed and/or permanently prohibited from participating in the conduct of the association's affairs by an order issued under section 8(e)(4) or (g)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1818(e)(4) or (g)(1)), all obligations of the association under the contract shall terminate as of the effective date of the order, but vested rights of the contracting parties shall not be affected.

(4) If the savings association is in default (as defined in section 3(x)(1) of the Federal Deposit Insurance Act), all obligations under the contract shall